

Nos. 11648-11649

United States  
Court of Appeals  
for the Ninth Circuit

E. L. EASON, JR.,

Appellee,

vs.

UNITED STATES OF AMERICA,

Appellee.

and

E. L. EASON, JR., FLORA RUTH EASON and  
LEWIS C. EASON, as Trustee of the Estate of  
Mildred Eason Stouffer, co-partners doing busi-  
ness as Eason Grinding Company,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court  
for the Southern District of California  
Central Division

FILED  
NOV 23 1948



No. 11648

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United States  
Court of Appeals  
for the Ninth Circuit

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E. L. EASON, JR.,

Appellant,

vs.

UNITED STATES OF AMERICA,

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Appeal from the United States District Court  
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# INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Amendment of Designation of Record, Points Relied on and Stipulation re same (11648-9).....	46
Answer:	
No. 11648 .....	7
No. 11649 .....	30
Appeal:	
Amendment of Designation of Record and Points Relied on (11648-9) .....	46
Certificate of Clerk to Transcript of Record on (No. 11648) .....	19
Certificate of Clerk to Transcript of Record on (No. 11649) .....	42
Notice of (11648) .....	19
Notice of (11649) .....	42
Stipulation for Consolidation of Cases on.....	44
Certificate of Clerk to Transcript of Record on Appeal:	
No. 11648 .....	19
No. 11649 .....	42
Complaint (No. 11648) .....	2
Exhibit A—Determination of Excessive Profits .....	4
Complaint (No. 11649) .....	22
Exhibit A—Order under Delegated Authority Determining Excessive Profits .....	25

	PAGE
Exhibit B—Notice dated Feb. 10, 1945, War Contracts Price Adjustment Board to Eason Grinding Company .....	28
Designation of Record, Points Relied on and Stipulation, Amendment of (11648-9—USCA)	46
Findings of Fact and Conclusions of Law:	
No. 11648 .....	15
No. 11649 .....	38
Judgment:	
No. 11648 .....	18
No. 11649 .....	41
Names and Addresses of Attorneys:	
No. 11648 .....	1
No. 11649 .....	21
Notice of Appeal:	
No. 11648 .....	19
No. 11649 .....	42
Statement of Points Relied on, Amendment of Designation of Record and (11648-9—USCA).	46
Stipulation for Consolidation of Cases on Appeal and the Submission thereof on one Printed Record (Nos. 11648-9) .....	44
Stipulation and Order Relative to Amendment of Designation of Record and Points Relied on (11648-9—USCA) .....	46

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\* Page numbering appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States In and  
For the Southern District of California, Central Division.

No. 5032-M

UNITED STATES OF AMERICA,

Plaintiff,

vs.

E. L. EASON, Jr.,

Defendant.

### COMPLAINT

The United States of America, plaintiff, by Charles H. Carr, its attorney for the Southern District Court of California, says that:

1. Defendant E. L. Eason, Jr., resides and does business in the City of Los Angeles, California.

2. Jurisdiction of this action is granted to the Court by the provisions of Section 24 of the Judicial Code as amended (28 U.S.C.A. 41 (1) ) and by the provisions of Section 403(c) of the Renegotiation Act.

3. After due notice to defendant, proceedings for the renegotiation of defendant's contracts and subcontracts were had and conducted by representatives of the Secretary of War. Thereafter, and on the 11th day of August 1944, the [2] Under Secretary of War, acting under and by virtue of the Renegotiation Act and pursuant to authority delegated to him, duly determined, in accordance



with law, that of the profits realized by defendant during the fiscal period of eleven months ending November 30, 1942, on his contracts and subcontracts subject to renegotiation, Thirty-three Thousand Nine Hundred Twenty Dollars (\$33,920.00) were excessive profits. Demand was made upon the defendant for payment to the United States of such excessive profits less the appropriate tax credit, if any. A full, true and correct copy of the order and determination of the Under Secretary of War is attached hereto as Exhibit "A" and by this reference made a part hereof.

4. The tax credit to which defendant is entitled under Section 3806 of the Internal Revenue Code is in the amount of Six Thousand Seventy-three Dollars and Forty-three Cents (\$6,073.43). This tax credit is computed upon the assumption that the profits determined to be excessive were returned as income by defendant for tax purposes and that the appropriate taxes have been or will be paid upon such profits.

5. Defendant has not petitioned the Tax Court of the United States for a redetermination of the amount of excessive profits received by him as provided by Section 403(e) of the Renegotiation Act and the period for filing such a petition has expired.

6. Defendant has not paid the United States and the United States has not withheld or by any other method eliminated said excessive profits in the amount of Thirty-three Thousand Nine Hundred Twenty Dollars (\$33,920.00), less the tax cred-

it aforesaid, nor any part thereof. Such amount is now due, owing, and unpaid.

Wherefore, plaintiff prays judgment against defendant in the sum of Twenty-seven Thousand Eight Hundred Forty-six Dollars [3] and Fifty-seven Cents (\$27,846.57), with interest at the rate of six (6) per cent per annum from August 11, 1944, and costs.

CHARLES H. CARR,  
United States Attorney,  
RONALD WALKER,  
Assistant U. S. Attorney,

/s/ ROBERT E. WRIGHT,  
Assistant U. S. Attorney,  
Attorneys for Plaintiff.

EXHIBIT "A"

War Department  
Office of the Under Secretary  
Washington

### DETERMINATION OF EXCESSIVE PROFITS

Pursuant to Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended, which term refers to said Act as last amended 14 July 1943 and as affected by Title VII of the Revenue Act of 1943 so far as applicable.

Whereas, E. L. Eason, Jr., an individual doing business as Eason Grinding Company (hereinafter referred to as the Contractor), holds contracts and subcontracts subject to renegotiation pursuant to the provisions of Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended (hereinafter referred to as the Act); and

Whereas, renegotiation has taken place between the Under Secretary of War and the Contractor, pursuant to the provisions of the Act, for the purpose of eliminating excessive profits realized by the Contractor during his eleven months ending 30 November 1942, under said contracts and subcontracts; and

Whereas, as a basis for said renegotiation the Under Secretary of War considered certain financial, operating and other data, submitted by the Contractor or obtained by the Under Secretary of War from governmental or other reliable sources, relating to the profits realized by the Contractor during said fiscal year under said contracts and subcontracts; and

Whereas, the Contractor has been granted full opportunity to submit such additional information and to present such contentions as the Contractor deemed material in determining the excessiveness of said profits and the renegotiability of such contracts and subcontracts, at hearings of which due notice was given, and due consideration has been given to the financial, operating and other data

and information so furnished or obtained and each of the contentions so presented;

Now, Therefore, pursuant to the authority and discretion vested in the Secretary of War, the Secretary of the Navy, the Secretary of the Treasury, the Chairman of the Maritime Commission, the Administrator of the War Shipping Administration, and the respective Boards of Directors of the Defense Plant Corporation, Metals Reserve Company, Defense Supplies Corporation and Rubber Reserve Company under the provisions of the Act, and duly delegated to the Under Secretary of War under subsection (f) thereof, it is hereby found and determined:

That \$33,920 of the profits realized by the Contractor during his eleven months ending 30 November 1942, under its contracts and subcontracts subject to renegotiation pursuant to the provisions of the Act, are excessive.

That in connection with the payment or discharge by any means of the amount of excessive profits determined hereby to have been realized by the Contractor, the Contractor shall be credited with any amount to which he may be entitled under Section 3806 of the Internal Revenue Code as computed by the Commissioner of Internal Revenue.

That the Contractor is directed to repay such excessive profits less such tax credit, if any, to the Treasurer of the United States.

That the excessive profits so found and determined shall be eliminated by any of the methods



provided in the Act or any combination thereof; and the Commanding General, Army Service Forces, and the Commanding General, Army Air Forces, are hereby authorized and directed to take any and all action which may be necessary or desirable to effect such elimination.

11 August, 1944.

/s/ ROBERT A. LOVETT,  
ROBERT P. PATTERSON,  
for: Under Secretary of War.

[Endorsed]: Filed Jan. 3, 1946. [4]

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[Title of District Court and Cause.]

### ANSWER

Comes now the defendant above named and in answer to the complaint of plaintiff on file herein, denies and alleges as follows, to wit:

#### First Defense

The complaint fails to state a claim against defendant upon which relief can be granted.

#### Second Defense

That said order of August 11, 1944, is void; that neither said Secretary of War nor said Under Secretary of War had the power or authority to make said order and are without power or authority to enforce said order according to its terms or otherwise or at all for the reason that said Renegotiation Act is void, without lawful effect and repugnant to the Constitution [6] of the

United States in each of the following particulars, to wit:

1. Said Renegotiation Act is repugnant to Article I, section 1, and Article II, section 8, paragraph 18 of the Constitution of the United States in that it unlawfully delegates legislative power to the defendants and to the secretaries of the various departments as in said Act set forth;

2. That said Renegotiation Act is repugnant to the Fifth Amendment to the Constitution of the United States in that it deprives plaintiffs of their property without due process of law;

3. That said Renegotiation Act is repugnant to the Fifth Amendment to the Constitution of the United States in that it takes plaintiffs' property for public use without just or any compensation;

4. That said Renegotiation Act is repugnant to the Tenth Amendment to the Constitution of the United States in that it attempts to exercise a power not delegated to the United States;

5. That said Renegotiation Act is repugnant to Article I, section 1, and Article I, section 8, paragraph 18, of the Constitution of the United States and to the Fifth and Tenth Amendments thereto, in that by said Act it is provided that "whenever, in the opinion of the secretary of a department (including the Secretary of War) the profits realized or likely to be realized from any contract with said department or from any subcontract thereunder, whether or not made by the contractor, may be excessive, the Secretary is authorized and directed to require the contractor or subcontractor

to renegotiate the contract price'', and that upon said renegotiation "the Secretary is authorized and directed to eliminate any excessive profits under such contract or subcontract" and neither said Renegotiation Act nor any other provision of law sets forth or declares any rules, standard, guide or policy by which said Secretary is to be guided in the administration [7] of said Act or in the determination of what are or are not excessive profits other than the arbitrary order, whim or caprice of said Secretary; that by said Act Congress has attempted to delegate to the Secretary the power to refix contract prices and has directed, authorized and empowered him, by unguided opinion and without setting forth any standard, gauge or rule, to determine what profits are excessive;

6. That said Renegotiation Act further violates said foregoing provisions of the Constitution and the Fifth and Tenth Amendments thereto in that it purports to vest in the Secretary the power to renegotiate contracts made and entered into between private persons, firms and corporations and to which contracts the government of the United States is not a party, and in instances where no privity of contract exists between the contractor or subcontractor and the United States;

7. That said Renegotiation Act is further repugnant to said Articles of the Constitution of the United States and to said Fifth and Tenth Amendments thereto, in that it provides that upon any negotiation conducted and made and upon any order entered pursuant thereto by the Secretary, said

Secretary may make a revision of said contracts renegotiated by reducing the contract price of said contract, but said Renegotiation Act contains no provision whereby the contractor can have his contract price raised in the event that such contract price did not produce a fair profit on the business done under said contract or any profit at all;

8. That said Renegotiation Act is further repugnant to said Articles of the Constitution and to said Fifth and Tenth Amendments thereto in that it does not provide for any equality of treatment as to all persons, firms or corporations whose contracts are made subject to the provisions of said Act, in the following [8] particulars, to wit:

(a) That by the provisions of said Act the Secretary is authorized, in his discretion, to exempt from some or all of the provisions of said Act "any contracts or subcontracts under which, in the opinion of the Secretary, the profits can be determined with reasonable certainty when the contract price is established \* \* \* when the period of performance under said contract or subcontract will not be in excess of thirty days;"

(b) That by the provisions of said Act the Secretary may exempt from the provisions of said Act a portion of any contract or subcontract during a specified period or periods if in the opinion of the Secretary the provisions of the contract are otherwise adequate to prevent excessive profits;

(c) That by the provisions of said Act the Secretary is authorized to exempt contracts and sub-



contracts, both individually and by general classes and types, from the operation of said Act;

(d) That said Renegotiation Act is made to apply only to contracts involving amounts in excess of \$100,000.00 and does not apply to contracts involving amounts less than \$100,000.00;

9. That said Renegotiation Act is further violative of said Articles of the Constitution and Amendments in that it directs the Secretary in determining excess profits under any contract not to make allowances for any salaries, bonuses or other compensation paid by a contractor to its officers or employees in excess of a reasonable amount and not to make allowance for any excess reserves set up by the contractor or for any costs incurred by the contractor which are excessive and unreasonable; that said Act does not contain any standard, guide or rule for the determination of what are reasonable salaries, bonuses or compensation or for the determination of what are or are not excessive or unreasonable costs [9] or reserves;

10. That said Renegotiation Act further violates said Articles of the Constitution and Amendments thereto in that it authorizes the Secretary, without any rule or standard to guide his discretion, to exempt from renegotiation contracts or portions of contracts made or to be performed during a specified period or periods of time, said period or periods of time to be fixed by the arbitrary action of the Secretary;

11. That in exercising the purported power to

determine excess profits the Renegotiation Act does not contain any limitation upon or description of the character of the material or data which the Secretary may consider;

12. That said Renegotiation Act is further violative of said Articles of the Constitution and Amendments thereto in that it contains no provisions for giving to the person whose contract is sought to be renegotiated a hearing or notice of place and time of hearing of such renegotiation; that said Renegotiation Act does not contain any provision for the reception of evidence or of giving to the contractor the right to cross-examine witnesses; that said Renegotiation Act does not contain any provisions requiring the Secretary to set forth in any manner the facts or figures forming the basis of any decision determining the existence of any excess profits;

13. That at the time of the making of said order of February 2, 1944, said Renegotiation Act did not contain any provision allowing a review in any court of the United States of any unilateral arbitrary or other decision made by a Secretary determining the existence of excess profits;

14. That said Renegotiation Act is further repugnant to said Articles of the Constitution and Amendments thereto in that it permits each contract sought to be negotiated by the Secretary [10] under the provisions of said Act to be construed in a manner different from that of any other contract in the computation of what constitutes an excess profit and permits the use of a different

standard or guide in the determination of what constitutes excess profits even when dealing with contracts of exactly the same class, covering the same materials and operating during the same period of time.

### Third Defense

(a) Defendant admits the allegations contained in paragraph I of plaintiff's complaint.

(b) Defendant denies the allegations of paragraph II of plaintiff's complaint and denies that the above entitled court has jurisdiction of this action at all for each and all of the reasons set forth in the second defense of this answer.

(c) Denies all the allegations of paragraph 3 of plaintiff's complaint save and except that portion alleging that on the 11th day of August, 1944, the Under Secretary of War made the unilateral order and determination as attached to plaintiff's complaint and marked "Exhibit A".

(d) Admits the allegations of paragraph IV of plaintiff's complaint, with the proviso that said defendant is only entitled to said tax credit therein alleged in the event that it be determined herein that during the eleven months ending November 30, 1942, defendant made excessive profits in the sum of \$33,920.00.

(e) Admit the allegations of paragraph V of plaintiff's complaint.

(f) Referring to paragraph VI of plaintiff's complaint defendant admits that he has not paid to the United States said sum of \$33,920.00 or any

part thereof; deny that said amount or any part thereof is now due, owing or unpaid. [11]

#### Fourth Defense

That said order of August 11, 1944, is unenforceable and void as being violative of the due process clause of the Constitution of the United States in the following particulars, to wit:

(a) That said order and the determination of excessive profits contained therein is based upon information secretly collected and not disclosed;

(b) That said order does not contain any general or special findings upon which the determination of excessive profits was made or based.

#### Fifth Defense

No contracts made by defendants or work done by defendants for the eleven months ending November 30, 1942, were made with the United States or performed for the United States or with any others than with private corporations or with private parties; that no single contract for said work during said period of time exceeded in amount the sum of \$99,000.00.

#### Sixth Defense

Deny that for or during the eleven months ending November 30, 1942, that defendant made, earned or received excess or excessive profits in the sum of \$33,920.00 or in any other sum or amount at all.

Wherefore, defendant prays that plaintiff take



nothing by reason of its complaint on file herein and that defendant have judgment herein for his costs and for such other and further relief as may to the court seem meet and just in the premises.

/s/ JOS. I. McMULLEN,

/s/ LEO R. FRIEDMAN,

Attorneys for Defendant.

[Endorsed]: Filed Feb. 23, 1946.

[12]

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[Title of District Court and Cause.]

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause came on for hearing, before the Court without a jury, on January 14, 1947, and the Court having considered the pleadings and the stipulations made and entered into in open court upon the hearing of this cause, and being now fully advised in the premises, now finds the facts and states the conclusions of law, as follows:

### FINDINGS OF FACT

1. That at all times herein mentioned, the defendant, E. L. Eason, Jr. resided in the County of Los Angeles, California.

2. After due notice to defendant, proceedings for the renegotiation of defendant's contracts and subcontracts were had and conducted by representatives of the Secretary of War. Thereafter, on the 11th day of August, 1944, the Under Secretary of War, acting under and by virtue of the Rene-

gotiation Act and pursuant to authority delegated to him, duly determined, in accordance with law, that of the profits realized by defendant during the fiscal period of eleven months ending November 30, 1942, on his contracts and subcontracts subject to renegotiation, Thirty Three Thousand Nine Hundred Twenty Dollars (\$33,920.00) [13] were excessive profits, and caused demand to be made upon the defendant for payment to the United States of such excessive profits, less the appropriate tax credit, if any.

3. That the tax credit to which defendant is entitled, under Section 3806 of the Internal Revenue Code is in the amount of Twelve Thousand Two Hundred Twenty One and 86/100 Dollars (\$12,221.86).

4. That defendant has not petitioned the Tax Court of the United States for a redetermination of the amount of the excessive profits received by him, as provided by Section 403(e) of the Renegotiation Act and the period for filing such petition has expired.

5. Defendant has not paid to the United States and the United States has not withheld or by any other method eliminated said excessive profits in the amount of Thirty Three Thousand Nine Hundred Twenty Dollars (\$33,920), less the tax credit aforesaid, nor any part thereof; that the amount now due, owing, and unpaid to the United States from the defendant is \$25,133.67 which amount includes interest at the rate of 6% per annum, from August 11, 1944 to date.

CONCLUSIONS OF LAW

1. That the Court has jurisdiction of the parties and of the subject matter of this action.

2. That plaintiff is entitled to recover from the defendant, the sum of \$25,133.67.

It Is Ordered, that judgment shall be entered in conformity herewith.

Dated April 19, 1947.

/s/ LEON R. YANKWICH,  
Judge, United States  
District Court.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed April 19, 1947.

[14]

In the District Court of the United States In and  
For the Southern District of California, Cen-  
tral Division

No. 5032-Y

UNITED STATES OF AMERICA,

Plaintiff,

vs.

E. L. EASON, Jr.,

Defendant.

### JUDGMENT

This cause came on regularly for trial before the Court, without a jury, on January 14, 1947 and in conformity with the Court's Findings of Fact and Conclusions of Law, it is

Ordered and Adjudged, That plaintiff, United States of America, do have and recover from the defendant, E. L. Eason, Jr., the sum of \$25,133.67.

Dated April 19, 1947.

/s/ LEON R. YANKWICH,  
Judge, United States  
District Court.

Judgment entered Apr. 19, 1947. Docketed Apr. 22, 1947. C. O. Book 42. Page 714. Edmund L. Smith, Clerk.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed Aug. 19, 1947.

[16]



[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that defendant above named does herewith and hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the final judgment and order made rendered and filed in the above entitled court and cause on April 19, 1947, and entered in the Civil Order Book 42, at page 714, under date of April 22, 1947, and from the whole of said judgment and order. Said judgment and order having been made and rendered in favor of plaintiff and against defendant.

Dated April 25, 1947.

LEO R. FRIEDMAN,  
JOS. I. McMULLEN,  
Attorneys for Defendant.

(Acknowledgment of Service.)

[Endorsed]: Filed May 2, 1947.

[18]

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[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the **District Court** of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 22 inclusive contain full, true and correct copies of Complaint; Answer; Findings of Fact and Conclusions of Law; Judg-

ment; Notice of Appeal; Statement of Points on Which Appellant Intends to Rely on Appeal and Designation of Contents of Record on Appeal which, together with copy of Reporter's Transcript of Proceedings on January 15, 1947, transmitted herewith, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$6.10 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 5th day of June, A. D. 1947.

(Seal)

EDMUND L. SMITH,  
Clerk.

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[Endorsed]: No. 11648. United States Court of Appeals for the Ninth Circuit. E. L. Eason, Jr., Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed June 6, 1947.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.